IN THE

Supreme Court of the United States

OCTOBER TERM, 1952

No. .....

THE ELECTRIC AUTO-LITE COMPANY, AND LOCAL 12, INTERNATIONAL UNION, UNITED AUTOMOBILE, AIRCRAFT AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, CIO,

Petitioners,

vs.

NATIONAL LABOR RELATIONS BOARD,

Respondent.

PETITION OF THE ELECTRIC AUTO-LITE COMPANY FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

TO THE HONORABLE SUPREME COURT OF THE UNITED STATES:

The Electric Auto-Lite Company respectfully petitions this Court for a Writ of Certiorari directed to the United

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States Court of Appeals for the Sixth Circuit, the court in which the record of this cause is now lodged.

The said record shows that this action was commenced before the National Labor Relations Board (hereinafter referred to as the "Board") upon complaints, issued by the Board against the said petitioner (hereinafter referred to as the "Company") and Local 12, International Union, United Automobile, Aircraft and Agricultural Implement Workers of America, CIO (hereinafter referred to as the "Union") charging the Company and the Union with unfair labor practices affecting commerce within the meaning of the Labor Management Relations Act, 1947, 61 Stat. 136, 29 U. S. C. Supp. IV, Sec. 141, *et seq.* (hereinafter referred to as the "Act").

The following steps occurred after the issuance of the complaints by the Board:

A. On December 29, 1950, the Board, with one of the four participating members dissenting, found that the Company, acting pursuant to its contract with the Union, discharged one of its employees, Melvin A. Eck (hereinafter referred to as "Eck"), because his membership in the Union had been terminated; that such termination was based upon some ground other than his failure to tender periodic dues or initiation fees uniformly required as a condition of retaining membership; and that the Company had reasonable grounds for believing that termination of Eck's membership was based on other grounds. The Board also found that the Union suspended Eck from membership and caused the Company to discharge Eck because he failed to pay certain charges of the Union; and that, by such conduct, the Union violated Section 8(b)(2) and 8(b)(1)(A) of the Act. The Board's order requires the Company to offer reinstatement to Eck. The order also requires the Company and

the Union, jointly and severally, to make Eck whole for any loss of pay he may have suffered by reason of his alleged wrongful discharge. (R. 76, 77.)

B. Pursuant to the provisions of Section 10(e) of the Act, the Board filed a petition in the United States Court of Appeals for the Sixth Circuit, on June 25, 1951, for enforcement of its order. (R. 1.)

C. On April 17, 1952, the United States Court of Appeals for the Sixth Circuit granted the Board's petition for enforcement of its order, with opinion, "for reason set forth in its (Board's) decision and order". (R. 281).

D. The Company and the Union filed petitions for rehearing and same were denied by the said United States Court of Appeals on May 13, 1952 (R. 295).

The questions presented by the petitioner for consideration by this Court are, briefly stated, as follows:

(a) Is the finding of the National Labor Relations Board that the Company had reasonable grounds for believing that Eck's membership in the Union was terminated for reasons other than his failure to tender the periodic dues and initiation fees uniformly required as a condition of acquiring or retaining membership supported by substantial evidence on the record considered as a whole as required by Section 10(e) of the Act (29 U. S. C. Sec. 160(e))?

Petitioner contends that the answer should be "No".

(b) Does an employer have, from the single fact of monthly check-off of Union dues, reasonable grounds under Section 8(a)(3) of the Labor Management Relations Act (29 U. S. C., Sec. 158(a)(3)) for believing that Union membership was terminated for reasons other than the failure of an employee to tender periodic dues uniformly required as a condition of retaining membership, where the

Union has certified that the employee is delinquent in the payment of dues and said employee does not protest to the Company after receipt of notice of such certification?

Petitioner contends that the answer should be "No".

The reasons relied on for the allowance of the writ, briefly stated, are as follows:

(a) The Board's decision and order, which were affirmed by the United States Court of Appeals, would require the Company to verify the Union's certification that Eck had lost his membership in the Union because of the delinquency in the payment of his dues by demanding the privilege to inspect and audit of the Union's books and records in violation of the provisions of Sec. 8(a)(2) of the Act (29 U. S. C., Sec. 158(a)(2)).

(2) The decision of the United States Court of Appeals is in conflict with the following cases which hold, in substance, that meddling in Union affairs constitutes a violation of the provisions of the Act prohibiting "unfair labor practices"; and that employers may not inquire into the manner in which labor unions conduct their internal affairs: *N. L. R. B. vs. Eaton Mfg Co., Wilcox-Rich Div.*, 175 F. (2d) 292; *Ohio Power Company vs. N. L. R. B.*, 115 F. (2d) 839; *Atlas Underwear Company vs. N. L. R. B.*, 116 F. (2) 1020; *Press Co., Inc., vs. N. L. R. B.*, 118 F. (2d) 937, *certiorari* denied, 313 U. S. 595; *N. L. R. B. vs. Calumet Steel Div. of Borg-Warner Corp.*, 121 F. (2d) 366; *N. L. R. B. vs. Collins & Aikman Corp.*, 146 F. (2d) 454.

(3) The record does not contain substantial evidence to support the Board's finding that the Company had reasonable grounds for believing that Eck was suspended from Union Membership for reasons other that his failure to tender periodic dues uniformly required as a condition of retaining membership.

Your Petitioner believes that the judgments of the Board and the United States Court of Appeals are erroneous for the reasons stated above, and that the honorable Court ought to require this cause to be certified to it for review, consideration, and final determination, as provided by law.

This Court has jurisdiction by virtue of Title 28, U. S. C., Sec. 1254.

A certified copy of the transcript of the record of the proceedings before the Board and the United States Court of Appeals is submitted herewith.

WHEREFORE, your Petitioner respectfully prays that a Writ of Certiorari may be issued out of and under the seal of this Court directed to the United States Court of Appeals for the Sixth Circuit commanding said Court to certify under the seal thereof and send to this Court, on a day certain to be named, a full and complete transcript of the record and all proceedings before the Board and the said Court of Appeals, to the end that the judgment of the said United States Court of Appeals may be reviewed, considered and determined as provided by law, and that this honorable Court may correct the errors complained of herein by your Petitioner and reverse said judgment of the United States Court of Appeals for the Sixth Circuit, and remand said cause, and grant such other and further relief as from the nature of the case your Petitioner may be entitled to pursuant to law.

The Electric Auto-Lite Company, Petitioner.

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SUPPORTING BRIEF OF PETITIONER, THE ELECTRIC AUTO-LITE COMPANY

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I

STATEMENT OF CASE

On August 3, 1948, the Company and the Union entered into a collective bargaining agreement (hereinafter called "Labor Agreement") for a period of two years (R. 222). Said Labor Agreement contained, among other things, the following provisions (R. 224):

Article 23

Maintenance of Membership

Section 1. For the duration of this contract, it is agreed that all employees covered by the contract who are members of the Union in good standing at the execution of this contract, and employees who may thereafter become members, shall as a condition of employment, remain members of the Union in good standing as provided in the constitution and by-laws of the Union.

Before a dismissal becomes effective in the case of a member who is not in good standing because of delinquency in the payment of dues, the employee will be given an opportunity on the first occurence only to reinstate himself in good standing within two (2) weeks from the date of dismissal is requested by the Union.

Any request to the Company for dismissal shall contain a certification by the Union that the individual whose dismissal is requested was a member of the Union in good standing on the date of execution of this contract, or, became a member after the date of this contract.

In the event of any dispute under this Maintenance of Membership provision as to whether an individual was a member of the Union in good stand-

ing on the date of execution of this contract, or as to whether the individual became a member of the Union after the date of execution of this contract, the dispute will be submitted to the United States Conciliation Service and its opinion will be accepted by all parties as final.

Melvin A. Eck (hereinafter referred to as "Eck") was a member of the Union at the time that the said Labor Agreement was executed (R. 102, 103).

Pursuant to a request signed by Eck on September 1, 1947, the Company deducted $1.50 each month, together with certain assessments, from Eck's earnings (R. 103, 143, 234). The Company made regular monthly deductions beginning September 1, 1947, to and including the time he was discharged (R. 145), which sums were paid to the Financial Secretary of the Union (R. 143).

On January 12, 1949, the Union mailed the Company a letter requesting the dismissal of the individuals on an attached list under the Maintenance of Membership Clause of the Labor Agreement because of the delinquency in the payment of their dues (R. 226). Eck's name appeared on the list (R. 227).

On January 14, 1949, the Company wrote to Eck advising him of the Union's request for dismissal under the Maintenance of Membership Clause of the Labor Agreement because of the delinquency in the payment of his dues. The Company's letter to Eck pointed out the fact that two weeks' grace period in which to correct his delinquency started to run on January 12, 1949 (R. 235). The letter was delivered to Eck's home on January 15, 1949 (R. 106, 119, 120).

On January 19, 1949, the Company mailed a list to the Union indicating the employment status of the individ-

uals shown on the list enclosed in the Union's letter of January 12th. The Company's list indicated that Eck was actively employed (R. 229). The Company informed the Union that two weeks' notice letters had been mailed to the individuals whose employment status was shown as "Active" or "Laid Off" (R. 229, 231).

On January 26, 1949, the Union mailed the Company a list of names of employees who had not corrected the delinquency in the payment of their dues and referred the Company to the Union's letter of January 12, 1949, wherein the Union had requested the dismissal of these employees. Eck's name was on that list (R. 232).

Following the exchange of the aforesaid letters, Eck was discharged as of January 27, 1949.

Eck then filed charges of unfair labor practices with the Board; and on January 16, 1950, the Board issued formal complaints charging the Company and the Union with unfair labor practices affecting commerce within the meaning of the Labor Management Relations Act, 1947, 61 Stat. 136, 29 U. S. C., Supp. IV, Sec. 141 *et seq.* (hereinafter referred to as the "Act") (R. 18, 21, 24).

On December 29, 1950, the Board, with one of the four participating members dissenting, found that the Company, acting pursuant to its contract with the Union, discharged Eck because his membership in the Union had been terminated; that such termination was based upon some ground other than his failure to tender periodic dues or initiation fees uniformly required as a condition of retaining membership; and that the Company had reasonable grounds for believing that termination of Eck's membership was on other grounds (R. 67, 88). The Board also found that the Union suspended Eck from membership and caused the Company to discharge Eck because he

failed to pay certain charges of the Union; and that, by such conduct, the Union violated Section 8(b)(2) and 8(b)-(1)(A) of the Act. The Board's order requires the Company to offer reinstatement to Eck. The order also requires the Company and the Union, jointly and severally, to make Eck whole for any loss of pay he may have suffered by reason of his alleged wrongful discharge (R. 75, 78).

Pursuant to the provisions of Section 10(e) of the Act, the Board filed a petition in the United States Court of Appeals for the Sixth Circuit for enforcement of its order (R. 1).

On April 17, 1952, the United States Court of Appeals for the Sixth Circuit granted the Board's petition for enforcement of its order, without opinion, "for the reasons set forth in its (Board's) decision and order" (R. 281).

The Company and the Union filed petitions for rehearing and same were denied by the said United States Court of Appeals on May 13, 1952 (R. 295).

II

SUMMARY

A. The following facts nullify the Board's findings that the Company had reasonable grounds for believing that Eck's membership in the Union was terminated for reason other than his failure to pay periodic dues uniformly required as a condition of retaining his membership in the Union:

1. There is nothing in the record which indicates that the Company had any knowledge as to the exact amount of the periodic dues uniformly required as a condition of retaining membership in the Union; and therefore the mere fact that the Company de-

ducted $1.50 each month from Eck's earnings and paid same to the Union pursuant to Eck's written request does not furnish any basis for the Board's finding.

2. At the time the Union requested Eck's dismissal, it certified, in writing, that Eck was delinquent in the payment of his dues.

3. The Company was prohibited by the Provisions of Section 8(a)(2) of the Labor Management Relations Act from demanding the privilege to inspect and audit the books and records of the Union for the purpose of ascertaining the status of Eck's dues obligations to the Union; and therefore the Company was compelled to rely on the Union's certification that Eck was delinquent in the payment of his dues.

4. Eck did not at any time protest to the Company the Union's certification that he was delinquent in the payment of his dues. From this fact the Company could only conclude that the Union's certification was correct.

5. The Company carefully followed a detailed procedure designed to avoid a discriminatory discharge before dismissing Eck.

B. The Board's finding is not supported by substantial evidence on the record as a whole as required by Section 10(e) of the Act.

III

ARGUMENT

Insofar as the Company is concerned the basic question presented is whether the Company had *reasonable grounds* for believing that employee Eck was suspended from the Union membership for reasons other than non-

payment of dues. The Company contends that this question must be answered in the negative. The question arises under provisions of Section 8(a)(3) of the Act (29 U. S. C., Sec. 158(a)(3)) which reads as follows:

"Section 8(a). It shall be an unfair labor practice for an employer—

(1) • • •

(2) • • •

(3) By discrimination in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage membership in any labor organization: Provided, That nothing in this Act, or in any other statute of the United States, shall preclude an employer from making an agreement with a labor organization (not established, maintained, or assisted by any action defined in section 8(a) of this Act as an unfair labor practice) to require as a condition of employment membership therein on or after the thirtieth day following the beginning of such employment or the effective date of such agreement, whichever is the later, (i) if such labor organization is the representative of the employees as provided in section 9(a), in the appropriate collective bargaining unit covered by such agreement when made and has at the time the agreement was made or within the preceding twelve months received from the Board a notice of compliance with sections 9(f), (g), (h), and (ii) unless following an election held as provided in section 9(e) within one year preceding the effective date of such agreement, the Board shall have certified that at least a majority of the employees eligible to vote in such election have voted to rescind the authority of such labor organization to make such an agreement: *Provided further, That no employer shall justify any discrimination against an employee for nonmembership in a labor organization* (A) if he has reasonable grounds for believing that such membership

was not available to the employee on the same terms and conditions generally applicable to other members, or (B) *if he has reasonable grounds for believing that membership was denied or terminated for reasons other than the failure of the employee to tender the periodic dues and the initiation fees uniformly required as a condition of acquiring or retaining membership:*" (Italics ours).

Section 8(a)(3) permits a collective bargaining agreement to require union membership as a condition of employment but by proviso stipulates that non-membership shall not justify discharge if the employer has "*reasonable grounds*" for believing that membership was denied or terminated for reasons other than the failure of the employee to tender the periodic dues and the initiation fees uniformly required as a condition of acquiring or retaining membership.

An examination of the record and of the brief for the National Labor Relations Board discloses that there was only one fact within the knowledge of the Company which could have furnished *reasonable grounds* to cause it to believe that membership was terminated for reasons other than the failure of Eck to tender periodic dues. That single fact was the check-off from Eck's earnings of $1.50 each month pursuant to the request signed by Eck on September 1, 1947. An examination of the written request, (R. 234), discloses that it made no reference to "regular dues," "monthly dues," "periodic dues" or even just "dues." The instrument merely gave the Company a revocable authorization to deduct the sum of $1.50 per month, together with specified assessments, and to pay the same to the Financial Secretary of the Union. It created no responsibility upon the Company to ascertain whether the amounts deducted were in full payment of Eck's obligations to the Union, or otherwise.

In an effort to protect itself under the Act, the Company insisted that whenever the Union requested the dismissal of an employee, the Union would be required to furnish the Company with a written certification to the effect (a) that the employee was a member of the Union in good standing on the date of the execution of the contract or became a member after that date, and (b) that the Union requested the dismissal of the employee under the Maintenance of Membership clause because of the delinquency in the payment of his dues. (R. 149, 153, 154, 194, 195, 212, 213.) Such a certification was furnished to the Company by the Union before Eck's dismissal (R. 226).

The record clearly shows other safeguards which the Company took to avoid wrongful dismissals. An orderly procedure was established to insure employees against discrimination (R. 139, 142, 148, 153, 194, 195, 212, 213). The procedure was strictly followed in Eck's case (R. 226, 227, 235, 106, 119, 120, 229, 233).

It was the Company's policy to tell its employees why they were being discharged (R. 153), and if any employee would raise a question about the alleged delinquency, the Company would bring the matter to the Union's attention (R. 133, 153). However, when Eck was discharged he did not at any time, or at any subsequent time, tell the Company that he disputed the fact that he was delinquent in the payment of his dues (R. 124, 125, 132, 135, 153). Eck also testified that he had never applied for reinstatement with the Company (R. 132).

The Company at all times maintained a "hands off" policy with regards to the internal affairs of the Union (R. 142, 154, 155, 162, 212). In doing so, it was complying with Section 8(a)(2) of the Labor Management Relations Act, 1947, 29 U. S. C. Sec. 158(a)(2) which reads, in part, as follows:

"(a) It shall be an unfair labor practice for an employer—

1. * * *

2. To dominate or interfere with the formation or the administration of any labor organization * * *."

It has been repeatedly held by the courts that meddling in Union affairs constitutes a violation of the National Labor Relations Act prohibiting "unfair labor practices", and that employers may not inquire into the manner in which unions conduct their internal affairs. *N. L. R. B. vs. Eaton Mfg. Co., Wilcox-Rich Div.*, 175 F. (2d) 292; *Ohio Power Company vs. N. L. R. B.*, 115 F. (2d) 839; *Atlas Underwear Company vs. N. L. R. B.*, 116 F. (2) 1020; *Press Co., Inc., vs. N. L. R. B.*, 118 F. (2d) 937, certiorari denied, 313 U. S. 595; *N. L. R. B. vs. Calumet Steel Div. of Borg-Warner Corp.*, 121 F. (2d) 366; *N. L. R. B. vs. Collins & Aikman Corp.*, 146 F. (2d) 454. The Company's determined effort to avoid intruding in the internal affairs of the Union is evident in the Record (R. 142, 154, 155, 162, 212).

The Board's decision and order, which were affirmed by the United States Court of Appeals for the Sixth Circuit, would require the Company to disregard the Union's certification that Eck had lost his membership in the Union because of the delinquency in the payment of his dues and instead demand the privilege to inspect and audit the Union's books and records in violation of Section 8(a)(2) of the Act. It is obvious that Congress did not intend that an employer should be placed in such an untenable position.

Turning now to the question of substantial evidence, the petitioner wishes to direct this honorable Court's attention to Section 10 of the Act, the pertinent parts of which are quoted as follows:

"Sec. 10(a) The Board is empowered, as here-

inafter provided, to prevent any person from engaging in any unfair labor practice (listed in section 8) affecting commerce. This power shall not be affected by any other means of adjustment or prevention that has been or may be established by agreement, law, or otherwise. * * *

* * * * *

(c) * * * If upon the preponderance of the testimony taken the Board shall be of the opinion that any person named in the complaint has engaged in or is engaging in any such unfair labor practice, then the Board shall state its findings of fact and shall issue and cause to be served on such person an order requiring such person to cease and desist from such unfair labor practices, * * *.

(e) The Board shall have power to petition any circuit court of appeals of the United States * * * within any circuit * * * wherein the unfair labor practice in question occurred or wherein such person resides or transacts business, for the enforcement of such order and for appropriate temporary relief or restraining order, and shall certify and file in the court a transcript of the entire record in the proceedings, including the pleadings and testimony upon which such order was entered and the findings and order of the Board. Upon such filing, the court shall cause notice thereof to be served upon such person, and thereupon shall have jurisdiction of the proceeding and of the question determined therein, and shall have power to grant such temporary relief or restraining order as it deems just and proper, and to make and enter upon the pleadings, testimony and proceedings set forth in such transcript a decree enforcing, modifying, and enforcing as so modified, or setting aside in whole or in part the order of the Board. * * *

The findings of the Board with respect to questions of fact if supported by substantial evidence

on the record considered as a whole shall be conclusive. * * * "(Italics ours).

We have already pointed out that there was only one fact within the knowledge of the Company which could have furnished *reasonable grounds* to lead it to believe that Eck's membership in the Union was terminated for reasons other than his failure to tender periodic dues; and that the single fact was the monthly deduction of $1.50 from Eck's earnings pursuant to his written request (R. 234). Does that single fact constitute *substantial evidence on the record* within the meaning of Section 10(e) of the Act? We think not.

It must be kept in mind that Eck's request that the Company deduct $1.50 (and certain assessments which are not in issue) and pay same to the Union did not in any way indicate that such sum represented his entire dues obligation to the Union. This fact, together with the facts that (1) the Union certified that Eck was delinquent in the payment of his dues, and (2) Eck did not at any time protest to the Company that he disputed the Union's certification, would negative any inference that the Company had *reasonable grounds* for believing that Eck's membership in the Union had been terminated for reasons other than his failure to tender periodic dues.

In *Universal Camera Corporation vs. National Labor Relations Board*, 340 U. S. 474, this Court ruled that substantiality of evidence must take into account whatever in the record detracts from its weight. Assuming, only for the purpose of discussion, that the fact of monthly deductions could be termed as "substantial evidence on the record", certainly the Union's certification of Eck's delinquency and the fact that he failed to protest to the Company would considerably detract from its weight to render it no greater than a scintilla of evidence, and therefore insufficient to support the Board's findings.

This Court, in *National Labor Relations Board vs. Columbian Enameling & Stamping Co.*, 306 U. S. 292, 300, has said that substantial evidence "must do more than create a suspicion of the existence of the fact to be established—it must be enough to justify, if trial were to a jury, a refusal to direct a verdict when the conclusion sought to be drawn from it is one of fact for the jury". In the case at bar, the fact that the Company deducted $1.50 each month and paid such amounts to the Union in accordance with Eck's request did no more than create a suspicion that the Company had grounds for believing that Eck's dues obligations to the Union were fully paid. There is absolutely nothing in the record to show that the Company had any knowledge as to the exact amount of the periodic dues uniformly required as a condition of retaining membership in the Union. Without such knowledge, the mere fact that the Company made monthly deductions from Eck's earnings and paid same to the Union, standing alone, cannot amount to "substantial evidence on the record" within the purview of Sec. 10(e) of the Act. There being no other evidence which would lead to any other conclusion, the Board's decision and order is contrary to law and its petition for enforcement of its order should have been denied by the United States Court of Appeals for the Sixth Circuit.

Respectfully submitted,

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THE ELECTRIC AUTO-LITE COMPANY
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LOCAL 12, INTERNATIONAL UNION, UNITED AUTOMOBILE, AIRCRAFT AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, CIO,
Petitioners,
vs.
NATIONAL LABOR RELATIONS BOARD,
Respondent

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1952

No. 124

THE ELECTRIC AUTO-LITE COMPANY
and
LOCAL 12, INTERNATIONAL UNION, UNITED AUTOMOBILE, AIRCRAFT AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, CIO,
Petitioners,
vs.
NATIONAL LABOR RELATIONS BOARD,
Respondent

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

Local 12, International Union, United Automobile, Aircraft and Agricultural Implement Workers of America, CIO, Petitioner, herein prays that a Writ of Certiorari issue to review the judgment of the United States Court of Appeals for the Sixth Circuit entered in the above captioned case on April 17, 1952, granting enforcement of an order of the National Labor Relations Board in this matter.

OPINIONS BELOW

The Decision and Order of the National Labor Relations Board (R. 67) is reported in 92 N. L. R. B. 1073. The judgment of the Court of Appeals appears at R. 281.

JURISDICTION

The judgment of the Court of Appeals was entered on April 17, 1952. On May 13, 1952 an order denying a petition for rehearing was entered. The jurisdiction of the Court is invoked under 29 U. S. C. A. 160(e) and 28 U. S. C. A. 1254.

QUESTIONS PRESENTED

1. May an employee be discharged under a valid union security clause if such employee does not pay to the union an obligation imposed upon all members of the union who do not attend a regular monthly union meeting?

2. In the event the dues of a union are increased by 50 cents a month for each member with the provision that a member who attends a regular monthly meeting will be exonerated from the payment of such increase, may a member be discharged under a valid union security clause if he does not attend the regular monthly meeting and refuses or fails to pay the fifty cents dues increase?

3. In the event a union member is delinquent in the payment of obligations taxed against him for his non-attendance at a regular monthly union meeting and in the event

his unspecified check-off is applied to the payment of such obligations with the result that he is delinquent in the payment of dues which are conceded to be periodic dues as contemplated under 29 U. S. C. A. 158(a)(3), may he be discharged under a valid union security clause?

4. Is an amalgamated local union chargeable for the acts of its component autonomous units?

5. Where the only action taken by a union is a written request for discharge of an employee in conformity with a valid union security clause, is such action protected by Section 8(c) of the Labor Management Relations Act of 1947, 29 U. S. C. A. 158(c)?

STATUTES INVOLVED

Pertinent provisions of the Labor Management Relations Act of 1947 are as follows:

> "* * * *Provided further*, that no employer shall justify any discrimination against an employee for non-membership in a labor organization * * * (B) if he has reasonable grounds for believing that such membership was denied or terminated for reasons other than the failure of the employee to tender the periodic dues and the initiation fees uniformly required as a condition of acquiring or retaining membership;" 29 U. S. C. A. 158 (a)(3).
>
> "It shall be an unfair labor practice for a labor organization or its agents—* * * to cause or attempt to cause an employer to discriminate against an employee in violation of subsection (a)(3) or to discriminate against an employee with respect to whom membership in such organization has been denied or terminated on some ground other than his

failure to tender the periodic dues and the initiation fees uniformly required as a condition of acquiring or retaining membership;" 29 U. S. C. A. 158 (b) (2).

"(C) The expressing of any views, arguments, or opinion, or the dissemination thereof, whether in written, printed, graphic, or visual form, shall not constitute or be evidence of an unfair labor practice under any of the provisions of this Act, if such expression contains no threat of reprisal or force or promise of benefit." 29 U. S. C. A. 158 (c).

STATEMENT OF CASE

The Electric Auto-Lite Company shall hereinafter be referred to as the "Company".

Local 12, International Union, United Automobile, Aircraft and Agricultural Implement Workers of America, UAW-CIO, is hereinafter referred to as the "Union".

The Auto-Lite Unit of Local 12, International Union, United Automobile, Aircraft and Agricultural Implement Workers of America, affiliated with the Congress of Industrial Organizations, is hereinafter referred to as the "Unit."

The Labor Management Relations Act of 1947 is hereinafter referred to as the "Act".

The International Union, United Automobile, Aircraft and Agricultural Implement Workers of America (CIO) is hereinafter referred to as the "International Union".

The dues imposed by the constitution of the International Union are hereinafter referred to as "$1.50 monthly dues".

The amount of 50¢ which was imposed by the unit is hereinafter referred to as "50¢ monthly dues". (In choosing such nomenclature we are not unmindful of the General Counsel's statements in his brief filed in the court below: "No argument is necessary to show that the character of anything is not necessarily established by its label.")

Since 1938 the Unit has been the certified bargaining representative of the employees in the Company's plant, 10 N. L. R. B. 66. Since 1942, there has been a valid maintenance of membership clause in the collective bargaining agreement which provides that all employees who are members of the union in good standing

> "shall, as a condition of employment remain members of the union in good standing as provided in the Constitution and By-Laws of the Union" (147-148).

About September, 1946 the membership of the unit at a regular meeting adopted a motion increasing the monthly dues of all members from $1.50 to $2.00 and exonerating members who attended the monthly meetings from the payment of the additional 50 cents (R. 38, 166, 167, 181, 182, 183).

> "The motion was that the individual pay $2.00 instead of the $1.50 * * *" (R. 183).

Each member was charged with such amount by the financial secretary of the Union (R. 202). In the event a member attended at the Unit meeting, upon the presentation of an attendance card he was exonerated from the payment of "50¢ monthly dues" (R. 166, 167, 202). The purpose of the motion was to encourage attendance at union meetings (R. 191) and thus to encourage democratic participation of members in union activities.

Eck, a member of the Union and an employee of the Company, failed to attend at least three meetings (R. 209) and did not receive exoneration of his "50¢ monthly dues" (R. 202).

> "Q. This sheet of paper states that March, 1948 deduction was applied to January, February and March meeting assessments?
> A. That's right.
> Q. Putting him one month behind in dues, is that correct?
> A. That's right."

Some of the employees who did not pay dues by check-off paid the "50¢ monthly dues" prior to the date of meetings (R. 199).

Eck knew that his check-off was applied to the "50¢ monthly dues" by reason of past custom and because he had received a notification (R. 114). In addition, he was sent a registered letter by the Company advising him of the fact that he was subject to discharge for dues delinquency. Eck being in arrears in his dues, in accordance with the Constitution of the International Union and the By-Laws of the Unit, was suspended from membership on December 1, 1948 and the Company, following notification by the Union, discharged him under the maintenance of membership clause of the contract (R. 233).

The Unit is an autonomous labor organization for which the Union keeps the financial records (R. 163).

The International Constitution of the Union provides (R. 84):

> "Where local unions deem it necessary they may exonerate certain members from payment of dues to the union. However, such members, with the excep-

tion of those holding gratuitous life memberships, shall be considered as dues paying members and per capita tax shall be paid for such members."

REASONS RELIED UPON FOR THE ALLOWANCE OF THE WRIT

1. The Court of Appeals in enforcing the Board's Order has decided an important and substantial federal question which has not been but should be settled by this Court.

2. The enforcement of the Board's Order draws into issue for the first time the interpretation by this Court of Sections 8(a)(3) and 8(b)(2) of the Act in respect to the meaning of periodic dues, uniformly required as a condition of retaining membership in the union.

3. The enforcement of the Board's Order leaves the law in a state of uncertainty as to whether labor unions may determine the dues to be assessed against its members or whether such determination lies solely within the exclusive jurisdiction of the Board under Sections 8(a)(3) and 8(b)(2). A determination of this question will settle this extremely important point of law and remove the uncertainty that now prevails.

4. In view of the statement of the dissenting member of the Board, as follows:

> "In fact, my colleagues concede that a proper increase in dues on the part of the union and the granting of rebate to members who attend meetings would serve as a valid defense to the discharge" (R. 84, 85).

there is uncertainty and doubt as to the procedure which unions must follow to legally impose obligations on their membership for non-attendance at union meetings.

5. In Appendix A of the General Counsel's brief filed in the Court below, 94 labor organizations were listed whose constitutions or by-laws contain express provisions dealing with non-attendance at union meetings. In addition to these unions there are many other thousands of workers in the nation who are covered by similar provisions and whose status is in doubt by reason of the Board's decision. In order that the unions' right to use a union security clause for the purpose of obtaining a discharge for the failure of an employee to attend a union meeting may be determined, an authoritative decision of this Court is required.

6. The action of the Court of Appeals leaves doubt and uncertainty as to the extent to which the Board may interfere with the internal affairs of a union organization; i. e., the right of a union to determine what are union dues and the right of a union to determine what monies paid by a union's membership through a check-off may be applied to obligations other than those held to be periodic dues under sections 8(a)(3) and 8(b)(2).

7. Since there is an apparent conflict between the Department of Justice's interpretation of Section 320(c)(4) of the Act with respect to the "check-off of membership dues in a labor organization" and the interpretation placed by the Board in this case upon similar language in Sections 8(a)(3) and 8(b)(2), this conflict should be resolved by this Court.

I.

IT WAS NOT THE INTENT OF CONGRESS TO DENY THE RIGHT TO DISCHARGE AN EMPLOYEE UNDER A VALID UNION SECURITY CLAUSE BECAUSE OF THE NON-PAYMENT OF AN OBLIGATION IMPOSED FOR NON-ATTENDANCE AT A UNION MEETING.

Congress in the Act restricted the definition of dues only to the extent that they must be "periodic" and "uniformly required". The non-payment of any charge against a member whether it be called assessment, meeting fine or "50¢ monthly dues" may therefore subject a member to discharge if the due is "periodic" and "uniformly required."

The Act as enacted by Congress does not deny the right of a union to encourage attendance at union meetings under the circumstances in the instant case. Not only does the action taken by the Union in the instant case satisfy the requirements of Section 8(a)(3), but it is indeed significant that Section 8(a)(3) does not refer to fines or assessments but only to dues which are defined as being "periodic dues • • • uniformly required as a condition of acquiring or retaining membership."

The legislative history of the union security provisions of the Labor Management Relations Act, as amended in 1947, unmistakably shows that what Congress desired to do was to prevent the discriminatory application of union security clauses against employees "for capricious reasons" (Senate Report No. 105 on S. 1126, Legislative History, hereinafter referred to as "Leg. H." of the Act, Vol. 1, page 409). The intention of Congress was that "Unions may not cause the discharge of employees by *discriminat-*

ing against them" (italics ours). (House Report No. 245, Leg. H. p. 300.) This Congressional purpose was also expressed as "a protection of the individual worker against *arbitrary* action by a Union" (italics ours). (House Conference Report No. 510, Leg. H. p. 545.)

Union Starch and Refining Company v. N. L. R. B., 186 F. 2d 1008, cited by the General Counsel below, supports this view upon which premise the case was decided.

The Senate Report emphasized that the provisions were designed to prevent the use of a closed shop as a method of coercing employees for improper purposes and of making them conform to the wishes or policies of union officials. The illustrations in the testimony calling for restrictions upon union security contracts all relate to discriminatory discharges of individual members.

Senator Taft said (Senate 5/9/47 p. 5087):

> "• • • That provision takes care of *arbitrary rules* on the part of unions. It takes care of cases similar to one in New York in which ten men were fired because the union made a rule that it would not permit anyone to continue in membership unless he was the son of a man already working in that plant and a member of that union."
>
> "There are also many abuses in connection with the firing of men. We further provide in the bill that if a man is fired by the union for some reason other than non-payment of dues the employer does not have to discharge him. The abuse at which that provision is aimed is the *usual type of abuse*, and *is the only type of abuse testified to* • • •."
>
> "We had testimony regarding the case of a union member who saw a shop steward knock down a foreman. • • • He testified truthfully • • • the union

discharged him from union membership, and the employer had to discharge him * * *."

"In a case of that sort, the committee bill provides that the employer does not have to fire the employee. The union can discharge him from union membership if it wishes to do so, but the employer does not have to discharge him from employment." (Italics ours.)

We fail to find in the legislative history anything which would indicate that the action taken by the union in the instant case comes within the classification of "an abuse". Although unions for many years have imposed obligations for non-attendance at union meetings, nevertheless in none of the Congressional discussions was there any mention made that such action was reprehensible and that it was a type of abuse which Congress sought to eliminate. Nor did the General Counsel in the Court below point to any abuse considered by Congress to be comparable to the action taken by the unit in this case. Nor was it named as "the usual type of abuse" by Senator Taft. By enacting 8 (a) (3) and 8 (b) (2) Congress did not intend to strike down as "arbitrary" the attempt on the part of a union to encourage democratic participation in its affairs. Had the matter been brought to Congress's attention it would have no doubt agreed with the Board (R. 72): "Moreover, we do not doubt that a member's attendance at a union meeting is highly desirable and salutary to carry out the democratic process."

The union security device was, however, expressly sanctioned to permit "employers and unions who feel that such agreements promoted stability by eliminating 'free riders' the right to continue such arrangements". (Sen. Rep. 105, Leg. H. p. 413.) It was accordingly provided that a member who did not meet the uniformly required finan-

cial obligations to the Union could be deprived of his membership and of his employment since the non-payment of such obligations would make such a member a "free rider". *To carry out its intent Congress defined dues so as to prevent discrimination and capricious action, and at the same time limited the restriction upon the use of union security clauses so as to permit the elimination of "free riders" by democratic methods.* Therefore, the statutory definition of dues is in terms of being "periodic" and "uniformly required". If each union member were subject to the same financial requirements there could be no discriminatory treatment and financial obligations to the union could not become a device for achieving capricious discharge by indirect means.

Congress made no effort to dictate to unions what might properly constitute the financial obligation of its members to the union. Congress at many points indicated that it did not intend to interfere with the internal conduct of unions provided that discriminatory devices were not used to cause loss of employment and provided that there was uniform treatment of union members as to their financial obligations to the union in cases where union security clauses are involved. *Certainly, the Congress which passed the 1947 Act had no intention to prevent a union from continuing or adopting non-discriminatory devices designed to promote democratic control of union affairs by encouraging the participation of the maximum number of members in union meetings.*

There is not a suggestion in the legislative history to which the General Counsel refers in his brief filed in the court below or in any part of the reports or debates, that Congress intended to outlaw practices which would have the effect of achieving the objective of placing union

action upon a democratic basis by insuring that all members participate in the making of decisions.

The General Counsel has pointed to no consideration which indicates even the possibility of discriminatory use of the dues provision nor does he suggest how this provision in any way defeats or interferes with the attainment of the Congressional purpose. Certainly, there is nothing in the record to show that it was discriminatorily applied to Eck.

Nor may it be assumed without basis that because the check-off card provides for the check-off of $1.50 in dues there was no greater dues obligation.

The Board has ignored the definition of dues in Article 16, Section 1 of the Union Constitution which reads as follows (R. 276):

> "Membership dues shall include the following financial obligations due and owing by a member or applicant for membership:
>
> (a) Initiation or reinstatement fees, as the case may be.
>
> (b) Monthly fees (hereinafter referred to "dues" or "monthly dues").
>
> (c) Special fees (hereinafter referred to as "assessments") levied by the International Union or any of its subordinate bodies in accordance with the provisions of this International Constitution."

In Section 8 (b) (1), it is written:

> "• • • That this paragraph shall not impair the right of a labor organization to prescribe its own rules with respect to the acquisition or retention of membership therein; • • •."

Here Congress has indicated that it is not the Board's function to interfere with the internal affairs of a labor organization as it has done in the instant case. We would ask this Court to settle these points:

1. That the denial of a union's right to apply a check-off to the payment of a member's obligations is an interference with the right of a union to prescribe its own rules.

2. That the Board's holding that an increase in monthly dues as herein described is a fine, is an interference with the right of a labor union to prescribe its own rules and determine what shall be considered its dues.

The Board's interpretation of 8 (a) (3) and 8 (b) (2) would frustrate the basic purpose of the statutory provision, since it would make illegal a healthy means of assuring democratic control of union affairs.

Even, however, if we were to accept the view of the language should receive a literal interpretation, no matter how unreasonable, there would still be no basis for the Board's conclusions. The language of 8 (b) (2) involves three elements:

1. Periodic dues.
2. Uniformity.
3. Payments which are required as a condition of retaining membership.

All these conditions were met by the unit in this case.

1. It may not be disputed that the requirements for the payment of $2.00 was periodic—the sum was payable each

month. Two dollars was what was "due" from the member. It was "membership dues" under the Union's constitution and there is no other document or law which determines what dues in the Union are.

2. The requirement was certainly uniform. Everybody was required to pay the $2.00 under like circumstances. The exoneration of 50 cents for attendance at meetings was also uniform. Everybody who attended a meeting got the 50 cents credit.

3. There could be no question that the sum was required as a condition of retaining membership. In fact the entire gravamen of the complaint is that membership was lost for non-payment.

If Congress intended to exclude the "50¢ monthly dues" imposed by the unit from the meaning of "dues" it would have done so specifically. *It is significant that "dues" as used in the Act is in the plural, thus, the Act contemplates more than one "periodic due".* In fact, it is much more logical to assume that if Congress intended to write a provision in conflict with the purposes given for its enactment, it would have been careful to spell out by precise language what would never occur to the reader of the statutes. It is to be noted that where Congress intended to impose a limitation on the *extent* of the financial obligation of a member to his union it has expressly done so. Sec. 8 (b) (5). In short Congress has nowhere suggested that periodic dues may not include a uniform reward, compensation or discount for those who attend a Union's meetings and participate in its deliberations. Indeed it may be said that "free riders" include not only those who attempt to obtain the benefits of union organization by failing to contribute their pro rata share of the cost, but those who seek

to get the benefits of the organization without assuming the responsibilities of membership and the responsibility of participating in the decisions.

In a similar problem presented under Sec. 302 (c) (4) of the Act with respect to the check-off "of membership dues in a labor organization", the Department of Justice ruled that membership dues included initiation fees and assessments. A like interpretation was announced by Senator Taft shortly after the law was passed. (See Hearings before the Joint Committee on the Economic Report, 80th Congress, 1st Session, p. 467). It would be hard to explain why Congress would permit the check-off of the 50 cents here in dispute as part of "membership dues" and intend to exclude it for the purposes of Section 8 (a) (3) and 8 (b) (2).

It is respectfully submitted that the Board's conclusion has no support in the legislative history, the purpose, or the language of the statute. It thwarts the sound democratic policy of financial encouragement to attend union meetings. It defeats earnest efforts to insure democratic control of union affairs. It injects arbitrary administrative control of internal union management. The decision of the Board is as unwise as it is wrong as a matter of law.

II.

SINCE ECK'S CHECK OFF MONIES WERE APPLIED TO LAWFUL OBLIGATIONS WHICH HE OWED THE UNION AT THE TIME OF HIS DISCHARGE HE WAS DELINQUENT IN THE PAYMENT OF "PERIODIC DUES • • • UNIFORMLY REQUIRED AS A CONDITION OF • • • RETAINING MEMBERSHIP" IN THE UNION AND HIS DISCHARGE WAS NOT IN VIOLATION OF LAW.

As indicated from the record quoted above, since Eck's check-off monies were applied to the 50¢ monthly dues he was delinquent in the payment of the $1.50 monthly dues imposed by the International Union. All parties apparently are in agreement that the $1.50 monthly dues are "periodic dues • • • uniformly required as a condition of • • • retaining membership" in the union. *If the union was permitted to apply the check-off to the payment of the 50¢ monthly dues then Eck was lawfully discharged.* We maintain that such procedure was not proscribed, for the following reasons:

1. The Act does not prohibit the union from making such application of the check-off; in fact the Department of Justice has ruled in regard to Sec. 302 (c) (4) of the act with respect to the check-off "of membership dues in a labor organization" that membership dues include initiation fees and assessments.

2. Eck was informed by the union that such application was being made of the check-off (R. 107, 114). "Well, according to the card it said 'checking the record they were going to take $1.50 union dues and pay the union fine which I owed for the meetings.'"

3. Eck in response to notification had appeared on two previous occasions for the purpose of paying a like delinquency and thus had knowledge of the union's practice (R. 114). "A. They always sent me a card. Q. What would you do when you got the card? A. I took it down and paid it."

4. In Eck's check-off authorization there was no limitation as to what the $1.50 should be applied and although Eck had knowledge that it was being applied to the 50¢ monthly dues, he did not advise the union to cease so applying it (R. 121).

5. The constitution provided for such application (Art. 16, Section 9,) (R. 277) by which provision Eck was bound. *24 O. Jur.* 631, Sec. 19.

6. Eck acquisced to the procedure by maintaining his membership in the union and by responding to the procedure on prior occasions (R. 121). "They have been doing it. I know that."

7. The record is clear that Eck did not protest the union's action nor did he revoke his check-off authorization as was his right at any time. (See check-off authorization, R. 234.)

8. The action of the unit in adding 50¢ to the dues is not proscribed by the constitution of the International Union.

9. The action of the unit accomplishes *only* what could have been accomplished simply by passing a resolution increasing the monthly dues to $2.00 or more, collecting the amount and later paying each member 50¢ if he attended the membership meeting.

It is clear that the observations made by the dissenting member are reasonable in the light of the Congressional intent and the practices of labor unions.

> "In fact, my colleagues concede that a proper increase in dues on the part of the Union and the granting of rebate to members who attend meetings, would serve as a valid defense to the discharge. This being so, it appears that the only thing the majority decision accomplishes is to require the Union to undergo the needless burden and expense of installing and maintaining a detailed bookkeeping system and engaging in innumerable cash transactions. Thus, by collecting the $2.00 before the monthly meetings and then returning the 50 cents to those who attend the meeting, the Union would perhaps have made its purpose clearer but the result would be the same as it is now in effect" (R. 84, 85).

There is no doubt that dues were unpaid. The question is whether the check-off was lawfully applied.

III.

THE RESPONDENT UNION, LOCAL 12, WHICH IS CHARGED WITH THE UNFAIR LABOR PRACTICES DID NOT PARTICIPATE IN THE ALLEGED WRONGFUL ACTS SET OUT IN THE COMPLAINT.

It is clear from the evidence that Local 12 is an amalgamated union. See its by-laws, G. C. Ex. No. 11, and the Constitution, G. C. Ex. 13. On the other hand the Auto-Lite Unit is a distinct labor organization with its own constitution and its own separate funds. At page 163 of the Record, John Begg, Chairman of the Auto-Lite Unit states:

> "We are a completely autonomous unit, there is no question about that, as far as contract procedure,

> negotiating of contracts, policing of contracts, negotiating of grievances, meetings. We have our own financial set up in a sense. We have our own officers. We even have a treasurer."

At page 188 of the Record, Mr. Begg testified as follows in regard to Financial Secretary Randolph Gray's connection with the Maintenance of Membership clause of the contract:

> "Mr. Goerlich: He'd be acting for the unit, is that right?
> The Witness: That's correct."

At page 190 the following question was put to Mr. Begg:

> "Mr. Begg, does the Union have the power and authority to reject applicants for membership in the unit?
> A. Yes."

The Record is clear that the unit contracts with the company in its own name without the intervention of any of the officers of Local 12. The contract, G. C. Ex. 2, indicates that it is signed by the company and the executive shop committees of the unit. No names of representatives of Local 12 appear on the contract. (The unit (not the union) and the company worked out the manner of giving notice of dues delinquency to the company's employees (R. 195).

It appears therefore that the respondent union, Local 12, cannot be the offending union. Its only connection with the alleged unfair labor practice is the fact that its financial secretary *on behalf of the unit* advised the company of the true status of Employee Eck's membership in the unit. Gray was not acting as an agent for Local 12 but was acting

as an agent for the unit. He was acting in a ministerial capacity only and for the unit. Thus for the purpose of this action the unit must be considered to come under the definition of a labor organization as set out under Section 2(5) of the Act. *N. L. R. B. v. Highland Park Mfg. Co.*, 341 U. S. 322.

IV.

THE LETTER OF JANUARY 12 ADDRESSED TO THE COMPANY UPON WHICH THE UNFAIR LABOR PRACTICE CHARGE WAS PREDICATED IS PROTECTED UNDER SECTION 8 (c) OF THE ACT.

The letter of January 12 (R. 226) upon which is hung the charge of unfair labor practices discloses that the company was simply advised that Melvin Eck was delinquent in the payment of his dues. The testimony of Randolph Gray and Melvin Eck affirms this fact. We submit that such action on the part of Gray was protected by Section 8 (c) of the Act.

> "The expressing of any views, argument, or opinion, or the dissemination thereof, whether in written, printed, graphic, or visual form, shall not constitute or be evidence of an unfair labor practice under any of the provisions of this Act, if such expression contains no threat of reprisal or force or promise of benefit."

The information given the Company contained no threat of reprisal or force or promise of benefit. There is nothing in the letter of January 12, nor is there any evidence in the record which would indicate that the union coerced or attempted to coerce the company to discriminate against Eck. The union simply stated a truth, that is, Eck was delinquent in the payment of his dues. Nor did the union advise the

company that Eck was delinquent in the payment of "periodic dues". Thus if it is held that Eck was dismissed for reasons other than the non-payment of periodic dues the letter of the union must have put the company on notice as to the non-periodic nature of the dues owing. Moreover, the company at all times was free to act as it chose. It must be concluded therefore that the dismissal of Eck was through no coercion on the part of the union but resulted wholly from the company's appraisal of the truthful information given to it by the union, as the company applied it to the contract.

The act of discharge was finally accomplished by the company free from any threat of force or threat of reprisal by the union. The company at all times was free to refuse to discharge Eck or could have demanded further details of his dues delinquency. In fact the decision of the Board imposes upon the company a duty to investigate Eck's dues delinquency before a discharge is made.

CONCLUSION

The Board's decision deprives the unions of the nation of an effective means whereby they can encourage attendance of members at union meetings. As pointed out above, the Board's decision is not borne out by the legislative history of the Act nor is it in conformity with the statement of policy of the Act, Sec. 1(b) where it is stated:

> "It is the purpose and policy of this Act, * * * to protect the rights of individual employees in their relations with labor organizations whose activities affect commerce * * *."

What better way could the rights of an individual employee in his relations with a labor organization be protected than to afford a means whereby a maximum participation is insured for each individual member.

We call attention to the fact that the Act does not deny the right of a union to encourage attendance at union meetings under the circumstances in the instant case. It is equally clear that the action by the union in the instant case satisfies the definition of dues as set forth in Section 8 (a) (3). It is indeed significant that Section 8 (a) (3) does not refer to fines or assessments but only to dues which are defined as being "periodic dues * * * uniformly required as a condition of acquiring or retaining membership". So long as any of the obligations imposed on a union member by a union are periodic and uniformly required as a condition of retaining membership, they come within the statutory definition and are not proscribed.

Had Congress intended to deny the right of a union to encourage democracy within its membership, it would have indeed been explicit. In fact, Congress has provided in

Section 9 the mechanics for determining a representative for the purpose of collective bargaining based upon majority preference by employees. Likewise, in Section 9 (e) of the Act, Congress has provided protection against a minority entering into a union security agreement. It therefore would appear to be *contra* to the objectives of Congress to deny the union the implement used in the instant case to encourage democratic participation in union meetings and insure majority representation in the union.

As the decision of the Board now stands the action of the union herein is in violation of the Act.

Encouragement of attendance at union meetings produces the following results:

1. It prevents control by a small minority.
2. It encourages democratic participation in labor union affairs.
3. It is an assurance that union policy will reflect the will of the majority.

For our conclusion we find no better expression than that drawn by the Board (R. 72):

> "Moreover we do not doubt that a member's attendance at a union meeting is highly desirable and salutary to carry out the democratic process."

Had the Board and Court of Appeals given adequate weight to this proposition in the light of the legislative history it would have dismissed the Complaint brought by the General Counsel.

We urge that the Board be required to return to the unions of America that which Congress had no intention of

taking away, a means whereby "democratic process" may be fulfilled within a labor union. As the decision of the Board now stands, unions may well end up with no participating members but only dues payers.

Wherefore, your petitioner prays that a writ of certiorari issue to review the decision of the Court of Appeals for the Sixth Circuit in this action.

Respectfully submitted,

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In the Supreme Court of the United States

OCTOBER TERM, 1952

Nos. 124 and 140

THE ELECTRIC AUTO-LITE COMPANY, AND LOCAL 12, INTERNATIONAL UNION, UNITED AUTOMOBILE, AIRCRAFT AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, CIO, PETITIONERS

v.

NATIONAL LABOR RELATIONS BOARD

ON PETITIONS FOR WRITS OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

BRIEF FOR THE NATIONAL LABOR RELATIONS BOARD IN OPPOSITION

OPINIONS BELOW

The opinion of the court below, incorporated in its judgment (R. 281), is not officially reported. The decision and order of the Board (R. 67) are reported at 92 NLRB 1073.

JURISDICTION

The judgment of the court below (R. 281) was entered on April 17, 1952. Petitions for rehearing filed by both petitioners on May 2, 1952 (R. 283, 289), were denied on May 13, 1952 (R. 295). The petitions for writs of certiorari were filed by Electric Auto-Lite Company (hereafter called the Company) and Local 12, International Union, United Automobile, Aircraft and Agricultural Implement Workers of America, CIO (hereafter called the Union), on June 13 and 19, 1952, respectively. The jurisdiction of this Court is invoked under 28 U. S. C. 1254, and under Section 10 (e) and (f) of the National Labor Relations Act, as amended.

QUESTIONS PRESENTED

Under Section 8 (b) (2) of the amended Act, a labor organization is permitted to cause or attempt to cause the discharge of an employee, pursuant to a union-security agreement, only if his membership in the organization has been denied or terminated for failure to pay "periodic dues and the initiation fees uniformly required." The employee here involved failed to pay certain charges imposed by the Union upon members who failed to attend union meetings; the Union diverted the employee's checked-off dues to the payment of these charges and thereafter caused his discharge on the ground that he was delinquent in his dues. The questions presented in No. 140 are as follows:

1. Whether Section 8 (b) (2) permits a labor organization to cause or attempt to cause the dis-

charge of an employee for nonattendance at a union meeting.

2. Whether a charge imposed by a union for nonattendance at a union meeting is comprehended by the term "periodic dues * * * uniformly required" as used in Section 8 (b) (2).

3. Whether a union may, without regard to the wishes of the employee involved, apply his checked-off dues to the payment of such a charge, leaving the employee delinquent in dues and vulnerable to discharge.

4. Whether substantial evidence supports the Board's finding that employee Eck did not authorize the Union to apply his checked-off dues to the payment of the charge levied against him for nonattendance at a union meeting.

5. Whether a union's request that an employer discharge an employee pursuant to a union-security agreement is protected by Section 8 (c) as a noncoercive expression of "views, argument, or opinion."

6. Whether substantial evidence supports the Board's finding that it was the petitioning union, rather than its constituent unit, which made the unlawful request for Eck's discharge.

The sole question presented in No. 124 is whether substantial evidence supports the Board's finding that the Company had reasonable grounds for believing that employee Eck's membership in the Union was terminated for reasons other than his failure to pay "periodic dues * * * uniformly required" and, therefore, that by discharging Eck

at the Union's request the Company violated Section 8 (a) (3) of the Act.[1]

STATUTE INVOLVED

The pertinent provisions of the National Labor Relations Act, as amended, and of the Labor Management Relations Act, 1947 (61 Stat. 136, 29 U. S. C., Supp. IV, 141, *et seq.*), are set forth in the Appendix, *infra*, pp. 15-18.

STATEMENT

Upon the usual proceedings under Section 10 of the National Labor Relations Act, as amended, the Board, on December 29, 1950, issued its findings of fact, conclusions of law, and order. The pertinent facts, as found by the Board, may be summarized as follows:

On May 27, 1948, the Company entered into a valid collective bargaining agreement providing that all its employees who had theretofore, or would thereafter, join the Auto-Lite Unit of the Union would be required to remain members in good standing as a condition of continued employment (R. 32; 222).[2] Prior thereto, Melvin Eck and a

[1] The second question stated by the Company (Co. Pet., pp. 3-4) is merely a restatement of the factual issue raised in its first question.

[2] The Union, which was certified as the exclusive bargaining representative of the Company's employees (10 NLRB 665), is an "amalgamated" local composed of about 60 units, including the Auto-Lite Unit. Membership in the Unit constitutes membership in the Union. The Union maintains the membership records of the Unit, collects all dues, fines and assessments, and remits to the Unit its share of such monies. The Union admitted that it had the sole responsibility for the administration of the maintenance-of-membership provision of the agreement (R. 33; 178-179, 188, 192, 199).

number of other employees who were members of the Union had executed check-off cards authorizing the Company to deduct from their earnings each month, and to pay over to the "Financial Secretary of Local 12, UAW-CIO," the "sum of one dollar and fifty cents", plus certain assessments not involved in this proceeding (R. 35; 142-143, 234). This sum was exactly equal to the amount of the dues prescribed in the UAW [3] constitution, and the Company admitted that it considered this sum to represent the monthly dues payable by each member (R. 70; 146, 276).

Pursuant to Eck's authorization, the Company regularly deducted $1.50 from his wages each month and transmitted this sum to the Union (R. 35; 145). Nevertheless, the Union in December 1948 suspended Eck on the ground that he was in arrears in dues. The Union's action was based on the fact that Eck had not attended several union meetings earlier that year, and had paid only a part of the charges levied against him by the Union because of his absences (R. 36; 197-198, 205, 208). These charges were levied pursuant to a motion, adopted by the Auto-Lite Unit in order to encourage attendance at meetings, increasing the dues from $1.50 to $2.00 a month, but exonerating members who attended meetings from paying the 50 cent increase (R. 38; 166-167, 180-181, 191). To avoid making the additional payments, members

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[3] United Automobile, Aircraft and Agricultural Implement Workers of America, the Union's parent body.

who attended meetings were required to fill out attendance cards which described the additional charge as "a 50 cent assessment . . . for nonattendance" (R. 167, 279).

The UAW's constitution, which expressly provided that dues should be $1.50 a month (R. 276), authorized local unions to levy "fines" for nonattendance at meetings (R. 277-278). The Chairman of the Auto-Lite Unit referred to the 50 cent charge as a "fine" or "assessment" (R. 167, 181), and Eck considered it a fine rather than dues (R. 112-113).

Upon Eck's suspension, the financial secretary of the Union, Randolph Gray, sent him a notice that the Union was applying his checked-off dues to his unpaid fines, and that he would be expected to correct his record (R. 36; 116, 279). When Eck failed to respond to this notice, Gray on January 12, 1949, advised the Company that Eck and a number of other employees were "delinquent in the payment of their dues" and requested their discharge under the maintenance-of-membership provision of the collective bargaining agreement (R. 35; 226).

Although the Company had never been notified of the non-attendance charge (R. 183), and although its own records showed that Eck's dues had been regularly checked off (R. 49; 147), the Company nevertheless advised Eck that the Union had requested his discharge and that he had a two-week grace period from January 12, 1949, in which to correct his delinquency (R. 36; 235). Eck received

the Company's letter on January 15 and mistakenly concluded that his grace period would expire two weeks from that date, *i.e.*, on January 29, before which time he intended to adjust his arrears (R. 36; 119). When the grace period actually expired on January 26, the Union advised the Company that Eck's arrears had not been corrected and referred to its earlier letter requesting his discharge (R. 36-37; 232). Upon receipt of this information, the Company promptly discharged Eck (R. 36-37; 233). At no time, however, did it ever make any inquiry concerning the basis for the alleged dues delinquency, but admittedly relied solely on the Union's statement that Eck was in arrears in dues (R. 37; 146-148, 153-156).

The Board, one member dissenting, found that the 50 cent fine for nonattendance at meetings did not constitute "periodic dues . . . uniformly required" within the meaning of Section 8(a)(3) and 8(b)(2) of the amended Act, and rejected the contention that Eck had authorized the Union's diversion of his checked-off dues to the payment of unpaid fines. Accordingly, the Board found that Eck's membership in the Union was terminated on some ground other than his failure to tender periodic dues, and that by causing the Company to discharge Eck therefor, the Union had violated Section 8(b)(2) and 8(b)(1)(A) of the amended Act. The Board further found that the Union's request for Eck's discharge was the cause for such discharge and that the request did not constitute a

noncoercive expression of views, argument or opinion protected by Section 8(c) of the Act (R. 46-48, 67). Finally, the Board rejected the Union's contention that, in requesting Eck's discharge, the Union's financial secretary was acting solely on behalf of the Auto-Lite Unit and not on behalf of the Union (R. 34, 67).

With respect to the Company, the Board found that, by complying with the Union's demand for Eck's discharge, the Company had violated Section 8(a)(3) and (1) of the amended Act, since the Company's own checkoff records provided reasonable grounds for believing that Eck's membership in the Union had been terminated for reasons other than arrears in dues (R. 49-50, 73-74). Accordingly, the Board ordered the Company and the Union to cease and desist from the unfair labor practices found and to reinstate Eck with back pay (R. 76-78).

The court below held, *per curiam*, that "the findings of the Board are supported by substantial evidence on the record, considered as a whole," and decreed enforcement of the Board's order "for the reasons set forth in its decision and order" (R. 281).

ARGUMENT

1. The Union, petitioner in No. 140, recognizes (Pet. 8) that the fundamental question upon which it is asking this Court to pass is whether, under the amended Act, a union is free "to use a union security clause for the purpose of obtaining a dis-

charge for the failure of an employee to attend a union meeting". We agree that, if it were substantial, this question would be of importance to labor organizations generally. We believe, however, that the terms of the Act and its legislative history leave no room for doubt that the question was properly resolved by the Board and the court below. Accordingly, since the decision below is clearly correct and since there is no conflict, we submit that review by this Court is unnecessary.

(a). Section 8(b)(2) of the Act unambiguously forbids a labor organization to cause an employer to discriminate against an employee for nonmembership in the organization except in a single situation —where the employee has been expelled from membership or denied membership for nonpayment of dues or initiation fees. Manifestly, nonattendance at a union meeting is not the equivalent of nonpayment of dues or initiation fees. It follows that to cause the discharge of an employee for nonattendance at meetings is barred by the Act.

This conclusion, required by the plain terms of the Act, is reaffirmed by the legislative history, which shows that Congress intended to sanction the use of union-security agreements only to eliminate so-called "free riders," *i. e.*, members who refused to pay their fair share of the expenses of maintaining their union. *Union Starch & Refining Co.* v. *National Labor Relations Board,* 186 F. 2d 1008, 1010 (C. A. 7), certiorari denied, 342 U. S. 815; S. Rep. No. 105, 80th Cong., 1st Sess., pp. 6-7; 93 Cong. Rec. 3837, 4887. Congress could have seen fit to

adopt the petitioning Union's suggestion (Pet. 15-16) that the class of "free riders" against which discrimination could lawfully be directed should include "those who seek to get the benefits of the organization without assuming * * * the responsibility of participating in the decisions." Instead, Congress chose in Section 8(b)(2) to immunize a union causing employer discrimination only where the employees affected fail "to tender the periodic dues and the initiation fees uniformly required * * *." This immunity, an exception to the Act's general policy of permitting employees either to refrain from or to participate in union activities without fear of loss of jobs, was properly confined to its statutory terms by the Board and the court below.

(b). The Union further contends in effect that it should be permitted to evade the Congressional policy against causing the discharge of employees for nonattendance at union meetings by disguising fines imposed for nonattendance as "dues." But it scarcely requires extended discussion to show that, as the Board and the court below held, Congress did not intend to permit unions to accomplish by indirection what it precluded them from accomplishing directly. The dispositive point here is that the payments involved are not "dues" within the meaning of the statute. Significant in this connection is the fact that the UAW constitution expressly contemplates the levying of "fines" for nonattendance

at union meetings (*supra*, p. 6);[4] the levies here in issue were "fines," as the Union's witness himself admitted (*ibid.*). It is clear that the charges were adopted to encourage attendance at union meetings rather than to raise revenue, and therefore do not fall within the normal conception of "dues."[5] Moreover, since the charges were payable only by those who did not attend meetings, they did not satisfy the express statutory requirement of uniformity.[6]

2. The Union's contention (Pet. 17-19) that in any event Eck was discharged for dues delinquency rather than for failure to pay the fine rests upon the fallacious assumption that, pursuant to provisions in its constitution, a union may, without regard to the actual wishes of individual members,

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[4] The definition of "dues" in the UAW constitution, which includes "special fees" (Pet. 13), was initially adopted shortly after Congress enacted Section 8(b)(2) to prevent unions from causing the discharge of employees suspended from membership for reasons other than failure to pay dues or initiation fees. Compare the UAW constitution adopted March 6, 1946, with the 1947 constitution (R. 276).

[5] *Fresh Meadow Country Club* v. *United States*, 17 F. Supp. 400, 401 (E.D.N.Y.); *Matter of Monroe Chapter*, 132 Misc. 109, 115, 228 N. Y. Supp. 248, 255; *Jefferson County Farm Bureau* v. *Sherman*, 208 Iowa 614, 619, 226 N. W. 182, 185.

[6] The exemption of "membership dues" from the provisions of Section 302, which prohibits the payment of money by an employer to the representatives of his employees, is entirely different both in scope and in purpose from the exemption of "periodic dues and the initiation fees uniformly required" in Section 8(b)(2) and 8(a)(3). Consequently, the Department of Justice interpretation of the phrase "membership dues" in Section 302(c)(4), upon which petitioner relies (Pet. 16), does not support petitioner's construction of the very different phrase used in Section 8(b)(2). S. Rep. 986, pt. 3, 80th Cong., 2d Sess., pp. 104-106.

apply to the payment of fines for nonattendance at meetings sums which the members have authorized to be deducted from their wages in payment of dues, thereby leaving the members liable to discharge for dues delinquency. So to hold "would permit rights guaranteed by the Act to be brushed aside by the artful drafting and interpretation of union constitutions and by-laws." *National Labor Relations Board* v. *Radio Officers' Union,* 30 LRRM 2103 (C. A. 2, May 6, 1952).

To the extent that the Union challenges the Board's finding that Eck did not in fact authorize the use of his checked-off dues in payment of the fine, the challenge poses merely a question of substantial evidence, properly decided below which does not warrant further review.[7]

3. The sole question presented in the Company's petition (No. 124)—whether substantial evidence supports the Board's finding that the Company, when it discharged Eck, had reasonable grounds for believing that his membership in the Union had

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[7] Petitioner's argument (Pet. 21), that a union's request for the discharge of an employee pursuant to a union-security contract may not be held to "cause" or be an "attempt to cause" illegal discrimination, because it is a noncoercive "expression of views, argument or opinion" and hence protected by Section 8 (c), is palpably fallacious, and has uniformly been rejected by the courts. *National Labor Relations Board* v. *Radio Officers' Union, supra; I. B. E. W.* v. *National Labor Relations Board,* 181 F. 2d 34, 38 (C. A. 2), affirmed, 341 U. S. 694. The Union's further contention (Pet. 19) that the discrimination against Eck was not caused by the Union, but by its constituent Auto-Lite Unit, raises only a question of fact which, as the evidence shows (*supra,* pp. 4, n. 2, 6-7), was properly decided adversely to the Union by the trial examiner, the Board, and the court below.

been terminated for reasons other than his failure to tender the periodic dues uniformly required as a condition of retaining such membership—is entirely factual and hence does not warrant review by this Court. In any event, the record fully sustains the finding of the trial examiner and the Board, approved by the court below. As the evidence shows (*supra*, pp. 5, 6, 7), the Company knew that all of the check-off authorizations, like Eck's, contemplated payments of $1.50 per month; it also knew from its own records that this amount had regularly been deducted from Eck's earnings and paid to the Union; and it was never notified that the Union had applied Eck's check-off money to the payment of the fine which had been levied against him. On these undisputed facts there was ample warrant for the finding that the Company had reasonable grounds for believing that the Union's request was grounded in something other than a mere failure to pay dues.

There is no basis for the Company's assertion that it is required, pursuant to the Board's decision in this case, to inquire into the Union's internal affairs. The statute imposes upon the employer the obligation to refrain from discharging an employee at the request of a union if the employer has reasonable grounds for believing that the employee's membership has been terminated for reasons other than failure to pay dues. The instant case holds only that where such reasonable grounds exist, the employer may not escape his statutory duty to refrain from discrimination by accepting as con-

clusive a union's mere assertion that dues delinquency is the reason for termination of membership.

CONCLUSION

For the reasons stated, it is respectfully submitted that the petitions for writs of certiorari should be denied.

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JULY, 1952.

APPENDIX

The relevant provisions of the National Labor Relations Act, as amended (61 Stat. 136, 29 U. S. C. Supp. IV, Sec. 151, *et seq.*), are as follows:

RIGHTS OF EMPLOYEES

SEC. 7. Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, and shall also have the right to refrain from any or all of such activities except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment as authorized in section 8 (a) (3).

UNFAIR LABOR PRACTICES

SEC. 8. (a) It shall be an unfair labor practice for an employer—

(1) to interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in section 7;

* * * * *

(3) by discrimination in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage membership in any labor organization: *Provided,* That nothing in this Act, or in any other statute of the United States, shall preclude an employer from making an agreement with a labor organization (not established, main-

tained, or assisted by any action defined in section 8 (a) of this Act as an unfair labor practice) to require as a condition of employment membership therein on or after the thirtieth day following the beginning of such employment or the effective date of such agreement, whichever is the later, (i) if such labor organization is the representative of the employees as provided in section 9 (a), in the appropriate collective-bargaining unit covered by such agreement when made; and (ii) if, following the most recent election held as provided in section 9 (e) the Board shall have certified that at least a majority of the employees eligible to vote in such election have voted to authorize such labor organization to make such an agreement: *Provided further,* That no employer shall justify any discrimination against an employee for nonmembership in a labor organization (A) if he has reasonable grounds for believing that such membership was not available to the employee on the same terms and conditions generally applicable to other members, or (B) if he has reasonable grounds for believing that membership was denied or terminated for reasons other than the failure of the employee to tender the periodic dues and the initiation fees uniformly required as a condition of acquiring or retaining membership;[8]

* * * * *

[8] Since this case arose, the Act has been amended to eliminate the requirement of an election to authorize a union-security agreement—an amendment which has no bearing on the questions presented. Act of October 22, 1951, 65 Stat. 601.

(b) It shall be an unfair labor practice for a labor organization or its agents—

(1) to restrain or coerce (A) employees in the exercise of the rights guaranteed in section 7: *Provided,* That this paragraph shall not impair the right of a labor organization to prescribe its own rules with respect to the acquisition or retention of membership therein; or (B) an employer in the selection of his representatives for the purposes of collective bargaining or the adjustment of grievances;

(2) to cause or attempt to cause an employer to discriminate against an employee in violation of subsection (a) (3) or to discriminate against an employee with respect to whom membership in such organization has been denied or terminated on some ground other than his failure to tender the periodic dues and the initiation fees uniformly required as a condition of acquiring or retaining membership;

* * * * *

(c) The expressing of any views, argument, or opinion, or the dissemination thereof, whether in written, printed, graphic, or visual form, shall not constitute or be evidence of an unfair labor practice under any of the provisions of this Act, if such expression contains no threat of reprisal or force or promise of benefit.

* * * * *

The relevant provisions of the Labor Management Relations Act, 1947 (61 Stat. 136, 29 U. S. C., Supp. IV, 141, *et seq.*), are as follows:

> SEC. 302. (a) It shall be unlawful for any employer to pay or deliver, or to agree to pay or deliver, any money or other thing of value to any representative of any of his employees who are employed in an industry affecting commerce.
>
> * * * * *
>
> (c) The provisions of this section shall not be applicable * * * (4) with respect to money deducted from the wages of employees in payment of membership dues in a labor organization: *Provided,* That the employer has received from each employee, on whose account such deductions are made, a written assignment which shall not be irrevocable for a period of more than one year, or beyond the termination date of the applicable collective agreement, whichever occurs sooner; * * *

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